

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Creation of a)	
Low Power Radio Service;)	MM Docket No. 99-25
)	
)	
Amendment of Service and Eligibility)	MM Docket No. 07-172
Rules for FM Broadcast Translator)	RM-11338
Stations)	
)	

To the Commission:

**Comments Concerning the
Third Further Notice of Proposed Rulemaking**

**Creation of a
Low Power Radio Service;
and
Amendment of Service and Eligibility Rules for FM
Broadcast Translator Stations**

Introduction

In response to the Federal Communications Commissions ("Commission"),
"Report and Order and Third Further Notice of Proposed Rule Making (FNPRM)"¹, we

¹ FCC – 11-105 Adopted: July 12, 2011 Released: July 12, 2011

hereby submit comments on the above captioned FNPRM, which was released July 12, 2011, and published in the Federal Register on July 29, 2011 (“Comments”). Comments are timely filed.

Discussion

LCRA Section 5(1) - Ensuring that licenses are available

The Commission, through this FNPRM, has tried to interpret Section 5 of the LCRA and its language, to determine the best methods for resolving translator Auction 83 and proceeding for a future LPFM filing window and a future translator filing window. In doing so, among other issues, the Commission must decide whether the existing ten-application cap is consistent with the standards of the LCRA and previous actions of the Commission. The Commission also needs to determine how best to revise their translator licensing procedures². We believe that existing ten-application cap is not consistent with the previous standards and policies of the Commission nor the language contained within the LCRA. Thus, we would agree with the Commission’s findings and recommend that the existing ten-application cap be discarded.

Our studies have shown that dismissals of all Auction 83 applications alone would not in fact create enough freed up spectrum in major markets for new LPFM stations. For this and other reasons, we believe that a technical settlement window is necessary to resolve MX applications from Auction 83 prior to a new filing window for either LPFM applicants or future translator applicants. A technical settlement window could potentially free up spectrum that could be made available for LPFM use.

The Common Frequency study referred to in this FNPRM ³ appears to have not taken into account that the existing interference and protection rules need to be modified in some form to agree with LCRA and the mandate from Congress. Further, there is little

² Id 1 ¶ 4-6

³ Id ¶ 7-10

technical detail provided as to the mythology used in the study. If the Commission were to adopt new interference rules for LPFM and those new rules were similar to the existing rules of the FM translators interference protection rules, many more channels would be available within the spectrum without the need to dismiss any Auction 83 translator applications. For example, picking an arbitrary point in the Miami / Fort Lauderdale, Florida DMA, we found that more than eight channels could be made available to future applicants. Likewise, five channels in West Palm Beach, Florida; more than twelve channels in the Orlando, Florida area; and nine channels in St. Petersburg, Florida area. The Commission further acknowledged that the translator protection rules in Section 74.1204 are “substantially more flexible than the minimum spacing requirements governing the LPFM service”⁴. We agree that the LPFM interference protection rules needlessly limit LPFM availability. Thus, we would propose a rewrite of the LPFM interference protection rules such that an applicant could use rules similar to those allowed by translators for interference protection purposes. We would also propose that an LPFM applicant be allowed to choose to use a simpler set of rules involving minimum spacing requirements as a filing option. While LPFM and translators are different services, they are similar in the scope of service technically. They should be treated similar with respects to technical interference protection rules. We feel that this would best serve the public interest at large.

While on the subject on interference and protection rules, though not the direct subject of this FNPRM, we would also propose that the Commission adopt and standardize the use of the Longley Rice algorithm for interference and protection analysis in all FM radio services. We would propose the allowed usage of a modified OET 69 for FM purposes, to be used for interference and protection analysis, similar to that in the digital television services which are currently using OET 69.

⁴ Id ¶ 13

The Commission asks in the FNPRM ⁵ whether existing LPFM and translator should be taken into account in the evaluation process of determining whether "license[s] are available" finding. Congress in the LCRA, mandates that FM translators and LPFM stations be treated as "equal in status"⁶. We feel that the presence of existing translators or LPFM stations should not enter into a licensing decision under Section 5 (1) or Section 5 (2).

As the Commission recognizes in this FNPRM, it would be unfair to simply discard the applications from the Auction 83 process so that others may take advantage of those applications in future filings. The Commission's policy has always been based on a first-come first-served policy with respects to available spectrum. It would be unfair and without precedence for the Commission to cancel applications from the Auction 83 process at the detriment of the translator service to solely benefit another service. Applicants invested a significant amount of resources in developing business models and trying to implement those business models despite a now seven year delay in processing. However, it is also unfair that some organizations may have taken advantage of the system at that time. The Commission should prevent this from reoccurring in the future.

It is our opinion that in order for the Commission to apply "equal in status", both LPFM and FM translator services must then have simultaneous filing windows. The Commission would then have to come up with some kind of process system for resolving mutual exclusive ("MX") applications. We would recommend that such a process be derived from the existing points system that is currently used to resolve similar situations between competing non-commercial educational ("NCE") applications.

LCRA Section 5(2) - Assessing the "needs of the local community"

⁵ Id ¶ 7-11

⁶ Local Community Radio Act of 2010 – Section 5 (2) – HR 1147- US Senate S.592

The Commission states in the FMPRM, “[the] needs of the local community ...that translators [and LPFM stations serve,] cannot be expected to provide meaningful local service, at least in larger markets”⁷. Due to the geographical areas of larger communities and the concept that LPFM stations generally only cover a circular radius of approximately 4 miles, we would agree that LPFM stations would not be capable of covering a large metropolitan market, and should not be required to do so.

The Commission statements that “the sole purpose of FM translator stations is to provide service to areas where direct reception of radio service is unsatisfactory due to the distance or intervening terrain obstructions”⁸, is somewhat narrow cited. FM translators do provide a unique service that serves the public interest along with LPFM stations. Translators have allowed broadcasters to make more efficient use of an already over-crowded FM spectrum. Translators have continued to provide meaningful service to the public in both rural and urban settings. For these reasons, Congress has acknowledged the public service of translators and LPFMs and mandated that service be treated as equal.

The Commission, in the FNPRM, ask whether they should “take cognizance of the differing eligibility, licensing, and service rules for the translators and LPFM services in assessing ‘the need of the community’”⁹. Congress mandated that LPFM and FM translators are of “equal in status”. We feel that the Commission should realign the existing rules for LPFM service such that both FM translators and LPFM stations share the similar technical rules as much as possible. We feel that this would bring both services closer to an “equal in status” state. We would further expand upon this concept

⁷ Id ¶ 14

⁸ Id ¶ 15 - *See Amendment of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7213 (1990) (“the sole purpose of FM translators is to provide service to areas where direct reception of radio service is unsatisfactory due to distance or intervening terrain obstructions”).

⁹ Id ¶ 18

by allowing FM translators to be classified as LPFM stations and LPFM stations to be classified as FM translators by a simple acknowledgment letter to the Commission as is currently the case within the television community. Of course, the licensee would still have to demonstrate compliance with the ownership rules of that service.

We would like to take note that LPFM stations are unique in themselves. LPFM stations unlike other stations that serve the public interest, are not required to keep public inspection files, nor do they need to comply employment hiring practices, nor minimum programming requirements other than programming must be “locally originated”. LPFM stations must be locally owned. LPFM stations are limited in that they must not air commercial material. The ownership of a LPFM station is limited. No other party that owns a LPFM station may have an attributable interest in both that LPFM station and any other broadcast stations.

LCRA Section 5(3) -"Equal in Status"

The Commission, in the FNPRM, ask whether they should be allowed to “waive its cutoff rules in order to give priority to a ‘late filer LPFM application’ over a pending FM translator application¹⁰”. The notice further goes on to discuss the legal implications of such an action. We would agree that the dismissal of existing applications would create a legal quack mire for the Commission, broadcasters and the public. Therefore, we would recommend that the cutoff rules not be waived but a procedure similar to “Option Four” below be adopted.

In resolving the Auction 83 dilemma, the Commission essentially suggested three options:

1: The dismissal of all pending translator applications in favor of future LPFM applications. The Commission recognizes that this choice may lead to extensive

¹⁰ Id ¶ 19

litigation. Again, we would agree with this assessment and do not think that it is in the public interest.

2: Not dismissing pending translator applications but instead processing all applications and deferring decisions on these applications until after the next LPFM window. The Commission recognizes that LPFM applicants would not have opportunities to file in many major urban markets under the current interference protection rules for LPFM stations.

3: Adopt a market specific translator application dismissal policy. Such a policy would determine the “LPFM Channel Floors” based on a geographical area within specific market sizes. Auction 83 Translator Applications would then be dismissed as need to comply with the “LPFM Channel Floors”. How this is determined is unclear from the FNPRM. Also, the “LPFM Channel Floors” has some issues of it own as discussed within these Comments.

Option Four

We would suggest a different approach – Option Four.

1: We would propose that the Commission resume processing on pending translator applications in markets where there are sufficient LPFM channels according to Exhibit A of the FNPRM¹¹.

2: We would also propose that the Commission should adopt new interference protection rules for LPFMs as discussed within these Comments.

3: All existing pending translator applications shall be required to be complete in a fully technically acceptable long form (evaluated against the Rules and dismissed if not in full compliance),

4: We would then proposed a technical settlement window for the existing pending translator applications, The goal of such a window shall be to diminish the total

¹¹ Id ¶ 29

number of existing pending applications by settlements and applications dismissal for any technical violations, therefore, opening more potential spectrum for future use.

5: We would then propose that a joint LPFM and FM translator window ("Future Window") be open. Only LPFM applicants would be allowed to file new applications and existing pending FM translator applications must at the same time renew their interest during this open window. Otherwise, those Auction 83 applications that did not renew their interest would be cutoff from this filing window and then dismissed.

6: Following the Future Window, another technical settlement window would be open to allow all competing MX applications in both services to be resolved if such resolutions are possible.

7: If MX applications still existed after this period of time, then the Commission would refer those applications to be evaluated under a pre-established point system similar to the point system currently used to resolve conflicts between Non-Commercial Educational applications. A corrected version of the "LPFM Channel Floors" could be used as part of the point system. We would recommend that the corrected version of the "LPFM Channel Floors" only be used for the first 100 markets and be modified to reflect the real possibilities based on the then Commission newly adopted interference protection rules for LPFMs. We generally feel that the "LPFM Channel Floors" is not necessary above the first 100 markets.

8: If the remaining MX applications could not be resolved at this point, we would recommend that those applicants be allowed to share the proposed channel or buy the other party out.

Referring back to item 4 under the Option Four section, the FPRNM states, "One applicant holds 25 of the 27 translator applications proposing locations within 20

kilometers of Houston's center city coordinates¹². We believe that we identified this one applicant and have studied their applications. What we discovered and was not revealed within the FNPRM, was that this applicant who filed those applications did so on only four separate towers. One tower has seven applications filed by this applicant, another tower has nine applications, still yet another tower has six and the fourth tower is also at six. Further, this applicant proposes to feed these translators all with the same single station signal source. This applicant is apparently trying to take advantage of the system. If the Commission would apply their own rules, most of these applications could be dismissed because of technical flaws and repeated coverage. This applicant continues to repeat this process in a circular motion further outside the Houston, Texas area. The applicant also appears to be rebroadcasting the same single source station on all its proposed translator applications. Dismissal of these applications could free up a significant amount space for other future applicants in the Houston, Texas area.

The selection of the use of the Arbitron Designated Marketing Areas in determining the LPFM Channel Floors has some significant shortcomings. The Arbitron DMAs are significantly larger than the area that the proposed LPFM stations can cover by significant amounts. Further, the population distributions within the DMA areas are generally inconsistent and have a tendency to be dense within certain areas of the DMA area leading to a distorted representation. This has a tendency **not** to create LPFM channels in communities where service **may be most desired**.

The FNPRM states, "we find that certain temporary restrictions on the modification of translator stations authorized out of the Auction 83 filings are necessary to preserve LPFM licensing opportunities and identified spectrum limited markets¹³." It goes on the further state, "we [would] direct the Bureau to suspend the processing of

¹² Id 1 ¶ 33

¹³ Id 1 ¶ 31

any translator modification application that proposes a transmitter site for the first time within any market which has fewer LPFM channels available than the proposed channel floor.” Generally, we would agree as long as such a freeze was less than 120 days. Further, we generally do not see a problem with modifications to existing licenses that exist within these LPFM channel deficient DMA. The Commission should also recognize that such modifications by the licensed translator applicant maybe necessary for numerous reasons in order to preserve the public service of that licensed translator. Such a freeze should be of minimal duration in order not to create an unnecessary hardship.

C. Prevention of Trafficking in Translator Station Construction Permits and Licenses

The FNPRM in dealing with trafficking of translator station construction permits and licenses, proposes to “limit the number of permits that any applicant receives from the processing of the remaining applications¹⁴”. In only this Future Window after allowing a technical window for settlements, do we agree that it may be necessary to limit the number of remaining permits awarded to anyone applicant. Under such a policy, the applicant should be allowed to dismiss the necessary applications to fall within those limits. At this point, we would propose that a cap of 50 applications be permitted.

In future filing windows, we believe that a better alternative to the above approach would be to limit the number of outstanding construction permits that could be awarded to anyone individual applicant at any given time based on the number of open construction permits that that applicant currently holds at that time that have not been fully constructed and do not have an application for a ‘license to cover’ those specific construction permit. In implementing such an approach, the Commission should allow a

¹⁴ Id ¶ 34

continuous window, or very frequent rolling windows for such filings. Doing so would naturally prevent the “trafficking of translators” because there would always be a consistent supply to be the public needs from the Commission.

D. Restriction on the Use of FM Translators to Rebroadcast the Signals of AM Stations

The FNPRM ask to consider whether the limitation of cross service translators should be limited to only the use of FM translators with licenses or permits in effect on or before May 1, 2009¹⁵. We feel that there should be no limitation to which FM translators can be used for cross service rebroadcast operations. Cross service rebroadcast operations have been very successful since their inception.

Other Issues

We find it interesting that this FNPRM in general chose only to cover Section 5 of the Local Community Radio Act of 2010.

Section 3 of the LCRA deals with the minimum distance separation requirements imposed on LPFM. We feel that Section 3 should be of vital interest to the Commission, LPFM community, and the translator community. While Section 3 of the LCRA commands the Commission to “eliminate third adjacency minimum distance separation requirements between –

- (1) low-power FM stations; and
- (2) full-service FM stations, FM translator stations, and FM booster stations¹⁶;

the LCRA in itself does not preclude the complete elimination of third channel adjacency interference protection rules. We would urge the Commission to adopt the current FM

¹⁵ Id ¶ 35 - 37

¹⁶ Local Community Radio Act of 2010 – Section 3 – HR 1147- US Senate S.592

translator interference protection rules and apply those rules to LPFM applicants as cited within these Comments. We feel that there is a need for third adjacency interference protection rules especially in limited situations where an LPFM applicant could propose a station in a densely populated area. Others have tried to justify that third adjacency has not been needed by signal-to-noise studies¹⁷. These studies have determined that a signal-to-noise ratio of 45 dB is acceptable for most receivers as a threshold for interference. ITU Recommendation 641 "Determination of Radio Frequency Protection Ratios for Frequency Modulated Sound Broadcasting.", recommends a signal-to-noise ratio threshold of at least 50 dB. The industry 'state of the art performance' is generally accepted to be 60 dB. We agree with this latter statement. Also contained herein is the statement, "listeners are not complaining about interference"¹⁸. Listeners generally will not complain about interference they will just change the channel to something else. For these and other reasons, at a minimum, we would urge the Commission to adopt some form of third adjacency interference protection rules. We believe that those rules should mirror the FM translator interference protection rules.

We also note that Congress in Section 4 of the LCRA applies protection to the radio reading services¹⁹. Hereto we would suggest that the Commission employ interference protection rules based on contour ratios rather than distance separation. We also feel that protection needs to be extended to all services including but not limited to the Radio Reading Service, such as In Band On Channel (IBOC) services and all Subsidiary Communications Authorizations.

In Section 6, the LCRA says that the Commission shall modify its rules to protect the potential for predicted interference to FM translator input signals²⁰. We would agree

¹⁷ United States House of Representatives - Hearing on Low Power FM – Pages 35 - 38

¹⁸ Id

¹⁹ Id at FN 16

²⁰ Id

and propose that the Commission modify its Rules and Regulations Volume 47 Sec. 74.1233, 'Processing FM translator and Booster Station Applications' to read as follows:

Sec. 74.1233 Processing FM translator and booster station applications.

...(b) The following provisions apply to displaced FM translators, and FM booster stations: (i) In the case of an authorized FM translator or FM booster which is predicted to cause or receive interference to or from an authorized FM or TV broadcast station or is technically not able to function as a translator due to interference, pursuant to Sec. 74.1203, 74.1204, 74.1205 of this chapter or interference with broadcast or other services under Sec. 73.209 or Sec. 73.509 of this chapter; such translators should be allowed to file an application for a change in output channel to any other available output channel, together with technical modifications which are necessary to avoid such interference. Such an instant application shall not be considered as an application for a major change in those facilities.

Such a modification would allow any translator whose inputs are interfered with by any source, to change the frequency of that source such that the interference would be eliminated. Further, if such interference could not be eliminated, we would propose that such a translator be allowed to be displaced to any other available channel. We would also propose to the Commission that frequencies 87.5 MHz., 87.7 MHz, and 87.9 MHz,. be permitted to carry FM broadcast services but limited only to FM translators and LPFM on a secondary service bases provided that these services do not interfere with existing and future DTV stations that may be licensed to this part of the spectrum . If the Commission approves the use of these frequencies for these services then we would propose that these frequencies also be allowed as displacement frequencies for use as cited above.

In addition, there are many geographical locations within the continental United States that suffer from terrestrial interference caused by phenomenon such as atmospheric ducting. We would propose that the Commission allow transmission delivery of signals to any translator that suffers any kind of interference via alternate means which shall be defined as by any means available to deliver a broadcast signal to that transmitter of that translator.

FM Band Expansion²¹

Though not a direct subjects of this FNPRM, we would strongly encourage the Commission to consider the expansion of the FM radio spectrum by reallocating DTV service for channels 5 and 6 to FM radio broadcast service.

The Diversity and Competition Supporters (“DCS”), a coalition of national organizations²², was created to advance the cause of minority ownership. In its Supplemental Comments, DCS urged the FCC to take a hard look at the proposal advanced by Mullaney Engineering, Inc.²³ to expand the FM band as part of a solution to better represent minorities in broadcast ownership.

Channels 5 and 6 (76 – 88 MHz) are adjacent to each other and occupy 12 MHz. jointly. In addition, the area below channel 5 (72 to 76 MHz) is allocated for fixed and

²¹ See - MB Docket No. 07-294 - Promoting Diversification of Ownership in the Broadcasting Services; MB Docket No. 06-121 - 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MB Docket No. 02-277 - 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MM Docket No. 01-235 - Cross-Ownership of Broadcast Stations and Newspapers; MM Docket No. 01-317 - Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; MM Docket No. 00-244 - Definition of Radio Markets; MB Docket No. 04-228 - Ways to Further Section 257 Mandate and To Build on Earlier Studies

²² DCS has been authorized to state that the following parties in the past:

1. Belo Corp.
2. Benton Foundation
3. Common Cause
4. Community Broadcasters Association
5. Council Tree Communications, Inc.
6. Destiny Communications LLC
7. Dover Capital Partners, LLC
8. First Broadcasting Investment Partners, LLC
9. Gannett Co., Inc.
10. Granite Broadcasting Corporation
11. Independent Spanish Broadcasters Association
12. Media Alliance
13. Mullaney Engineering
14. National Association of Broadcasters
15. National Organization for Women
16. News Corporation
17. Spanish Broadcasting System, Inc.
18. ZGS Communications

²³ Proposal Mullaney Engineering, Inc – MB Docket No. 87-268 – Seventh Report and Order and Eighth Further Notice of Proposed Rule Making – Petition For Reconsideration and / or Comment – October 2007.

mobile use. This area would provide a sufficient guard band to preclude the possibility of interference to DTV channel 4 (Figure 1 below).

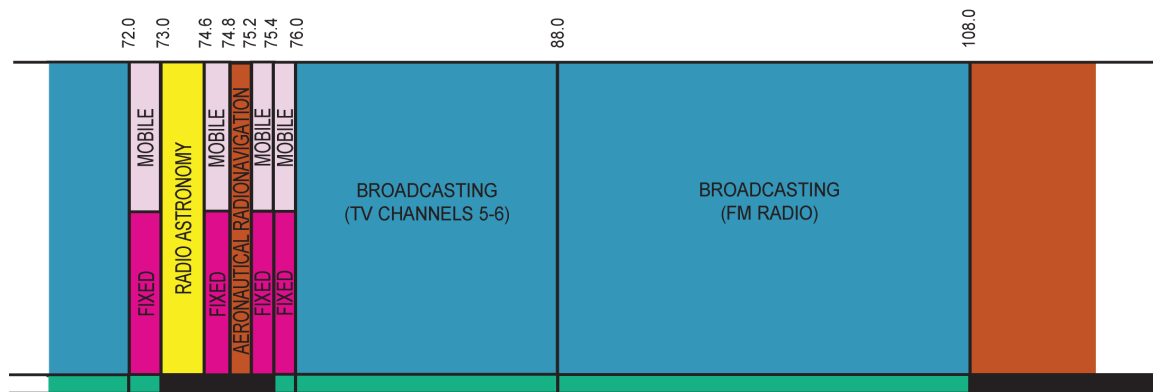


Figure 1²⁴

Due to the migration from analog television to digital television, the impact to the DTV broadcasters using channels 5 and 6 would be minimal at this time. It should be noted that as time pass on, more users of DTV services may migrate to this part of the spectrum. Such migrations would make future use of this spectrum for FM broadcast services more difficult. The Commission should also consider a shared use plan of this spectrum for an interim period of time.

As far as reception within the new proposed band, many radios constructed for distribution in other markets outside the United States, such as Japan and other countries using the CCIR FM band, are already designed receivers to operate from 76 MHz to 108 MHz in order to accommodate those markets. Unlike the familiar IBOC delays, radios for reception should be readily available upon approval of the expansion of the FM band.

The FM spectral crowding is almost unimaginably intense, and a real appetite exists for spectrum for FM broadcasting, as evidenced by the massive response to the recent filing windows. The entire present Non-Commercial Educational (NCE) or

²⁴ <http://www.ntia.doc.gov/osmhome/allochrt.pdf>

reserved band spectrum is only 4 MHz wide. A single DTV channel is 6 MHz wide, one and one half the bandwidth of the entire NCE FM spectrum. Commercial FM broadcasters have a total of 16 MHz or 2 2/3 DTV channels of spectrum. In contrast, there currently is a lot of spectrum allocated for DTV use (approximately 492 MHz). Reallocation of DTV channels 5 and 6 would be a major improvement in the utilization of broadcast spectrum better servicing the overall public interest.

Conclusions

We feel that it is necessary for the Commission to take prudent action to properly implement the next filing window for LPFM and FM translator future applicants. A well thought out and executed plan is essential to the development of a strong and vibrant LPFM industry as well as the FM translator industry. The sheer volume of applications caused by pent-up demand is a good indication for the need of expansion of the FM band as well as significant modifications to the interference and protection rules for LPFM service.

We urge the Commission to accept and act prudently on these Comments concerning Creation of a Low Power Radio Service; and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations.

Respectfully Submitted;

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